IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1067 OF 2004

M/s.Navjivan Kagdi & Co. ... Appellants.
Versus.
Dhiren S.Doshi & others. ... Respondents.

Shri V.R.Maniar i/by Pratik Sakseria for the Appellants.

Shri Shrikant Shah for the Respondents Nos.1.

Shri Kishore Jain i/by M/s.Mehta Girdharilal for the Respondent No.2.

Shri P.G.Lad for the Respondent No.3.

CORAM : ABHAY S. OKA, J.

DATED : 14th March, 2005.

P.C.:

1. Admit. Shri Shrikant Shah waives service for Respondents No.1. Shri Kishore Jain waives service for the Respondent No.2 and Shri P.G.Lad waives service for Respondent No.3. The learned Counsel appearing for the Appellant states that no relief has been claimed in Notice of Motion No.6156 of 1996 against the Respondent No.4 in this Appeal. Hence the service of notice on the Respondent No.4 is dispensed with.

2. After arguing the Appeal for some time the learned Counsel for the Respondents Nos.1 and 2 and the learned Counsel for the Respondent No.3 pointed out that one of the Defendants has already filed Written Statement in which the issue of maintainability of the suit has been raised. The learned Counsel appearing for the parties

suggested that the suit can be expedited by directing the learned trial Judge to consider the issue as to the maintainability of the suit. Till disposal of the suit ad-interim order which was operating during the pendency of the Notice of Motion can be continued.

3. In view of the submissions made by the learned Counsel for the parties, I pass the following order:

(i) Till final disposal of the Suit No.6591 of 1996, the interim arrangement which was operating till disposal of the Notice of Motion No.6156 of 1996 will continue to operate. It is made clear that the issue regarding the maintainability of the suit based on section 69 of the Indian Partnership Act, 1932 is kept expressly open. It will be open for parties to urge before the trial Court that the issue as to maintainability of the suit on the basis of section 69 of the said Act of 1932 be framed and be tried as a preliminary issue. It is made clear that if such an issue is framed, the same shall be decided uninfluenced by the findings recorded in the impugned order dated 16th November 2004 as the said findings are only prima facie findings.

(ii) If there is any delay on the part of any of the Defendants in filing the written statement, the learned trial Judge will consider the prayers made for extension of time in accordance with the law and pass orders thereon expeditiously. Hearing of the suit is expedited.

(iii) All contentions of the parties on merits are expressly kept open.

(iv) The Appeal is disposed of in the above terms with no order as to costs.

(v) The parties and the concerned Court to act on authenticated copy of this order.

Judge.